

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATIONAL SEATING & MOBILITY, INC.

Plaintiff,

No. C 10-02782 JSW

v.

MICHAEL PARRY, et al.,

Defendants.

**NOTICE OF TENTATIVE
RULING AND QUESTIONS FOR
HEARING AND ORDER
REQUIRING FURTHER
SUBMISSION**

AND RELATED COUNTERCLAIM

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
NOTICE OF THE FOLLOWING QUESTIONS FOR THE HEARING SCHEDULED ON
NOVEMBER 1, 2013, AT 9:00 A.M.:

The Court has reviewed the parties' papers and, thus, does not wish to hear the parties reargue matters addressed in those pleadings. If the parties intend to rely on authorities not cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these authorities reasonably in advance of the hearing and to make copies available at the hearing. If the parties submit such additional authorities, they are ORDERED to submit the citations to the authorities only, with reference to pin cites and without argument or additional briefing. *Cf.* N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to explain their reliance on such authority. The Court suggests that associates or of counsel attorneys who are

1 working on this case be permitted to address some or all of the Court's questions contained
2 herein.

3 The Court **tentatively grants** the motion for final approval of the Settlement. With
4 respect to the attorneys' fees, based on the current record, the Court will **tentatively grant in**
5 **part the request**, as follows. The Court concludes that Class Counsel have not adequately
6 supported their lodestar request or shown why the Court should award fees in excess of the
7 benchmark of 25% that the Ninth Circuit applies when a court relies on the percentage-of-
8 recovery method. On the current record, the Court would only grant the request for attorneys'
9 fees based on 25% of the maximum settlement payment, or \$174,781.25.

10 However, the Court will give Class Counsel a further opportunity to support its request,
11 although it shall not compensate Class Counsel for this additional work. If Class Counsel seeks
12 to have the Court award the full amount of attorneys' fees requested (\$197,581.96), by no later
13 than November 9, 2013, they must provide the Court with a generalized breakdown, per
14 attorney, of the type of work performed (*e.g.*, research on motion for class certification, drafting
15 motion for class certification, prepare discovery requests, respond to discovery requests,
16 document review), the number of hours spent on each task, and the billing rate per hour for that
17 attorney.

18 In addition, the parties shall be prepared to address the following questions:

- 19 1. There is a discrepancy between the Class identified in the Settlement Agreement
20 and Release (Docket No. 116, Settlement Agreement and Release at ¶ 1.B.1) and
21 the proposed form order which the Court utilized when it granting preliminary
22 approval. (Docket No. 124, Order Granting Motion for Preliminary Approval at
23 2:16-20.) Was this a drafting error, and can the parties confirm that notice went
24 out to the broader class defined in the Settlement Agreement?
- 25 2. Do the parties have any authority that a submission from an attorney is sufficient
26 evidence to support an incentive award to Plaintiff? If not, do they intend to
27 supplement their request for an incentive award with a declaration from Mr.
28 Parry?

